

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference PCT 21607	FOR FURTHER ACTION	See item 4 below
International application No. PCT/US2005/009198	International filing date (<i>day/month/year</i>) 18 March 2005 (18.03.2005)	Priority date (<i>day/month/year</i>) 22 March 2004 (22.03.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant MERCK & CO., INC.		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis*.1(a).
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the report |
| <input type="checkbox"/> Box No. II | Priority |
| <input checked="" type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

	Date of issuance of this report 26 September 2006 (26.09.2006)
The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 338 82 70	Authorized officer Philippe Becamel e-mail: pt12@wipo.int

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 29 SEP 2005

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WIPO

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To:
DAVID A. MUTHARD
126 EAST LINCOLN AVENUE
RAHWAY, NJ 07065-0907

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference PCT 21607		Date of mailing (day/month/year) 27 SEP 2005 FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/US05/09198	International filing date (day/month/year) 18 March 2005 (18.03.2005)	Priority date (day/month/year) 22 March 2004 (22.03.2004)
International Patent Classification (IPC) or both national classification and IPC IPC(7): C07C 211/00 and US Cl.: 564/384		
Applicant MERCK & CO., INC.		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Authorized officer

Samuel A. Barts

Telephone No. 571-272-0500

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/09198

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No. v

PCT/US05/09198

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 2

because:

☒ the said international application, or the said claim Nos. 2 relate to the following subject matter which does not require an international preliminary examination (*specify*):

A "use of" claim is not a statutory class of invention.

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____ are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claims Nos. _____

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐

has not been furnished

☐

does not comply with the standard

the computer readable form

☐

has not been furnished

☐

does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/0916

Box No. V Reasoned statement under Rule 43 *bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 6-7 YES
Claims 1-5 and 8 NO

Inventive step (IS)

Claims 6-7 YES
Claims 1-5 and 8 NO

Industrial applicability (IA)

Claims 1-8 YES
Claims NONE NO

2. Citations and explanations:

Claims 1-5 and 8 novelty under PCT Article 33(2) as being anticipated by Fox et al and claims 1-5 and 8 lack an inventive step under PCT Article 33(3) as being unpatentable over Fox et al.

Fox et al discloses in table V on page 1139 compounds which are fully embraced by claims 1-5 and 8. The compounds fall within the generic definition of these claims.

Claims 6-7 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the claimed invention. The compounds of these claims are not disclosed in Fox et al and they are not suggested in the prior art.

Claims 1-8 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.